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REMARKS

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks.

Regarding the Information Disclosure Statements

Applicants appreciate the Examiner's consideration of most of the references submitted in this application and regret the need to submit such a large number of references. Those considered are believed to include those of most relevance. In the cases where page numbers or other citation information was not submitted, Applicant considers the entire reference to be of interest and relevant and Applicant has cited all information available to him regarding this subject. Applicant requests reconsideration of the reference citations that have not been considered.

Regarding the Claim Objections

Claims 29-38 were objected to because of the "video on demand system" label in the preamble. This label was used to provide antecedent basis for the use of "VOD" in the remainder of the claims. In view of the Examiner's objection, the preamble of these claims has been amended without substantive effect on the scope of the claims. Reconsideration and allowance are respectfully requested.

Regarding the Rejections under 35 U.S.C. §101 / Interview Request

The Office asserts that claims 1-28 are not directed to statutory subject matter. The undersigned wishes to note that the Office's interpretation of what constitutes statutory subject matter has shifted numerous times since this application was originally filed in 2004. In fact, today, the Office's interpretation and application of the rules regarding statutory subject matter is inconsistent from examining group to examining group. Accordingly, Applicant is happy to amend the claims to assure that they meet the requirements of being statutory subject matter, but finds it difficult to find appropriate guidance in this area. Hence, if the Examiner finds that the amendments presented do not meet the requirements of his examination group's interpretation of

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the law surrounding statutory subject matter, the undersigned respectfully requests a telephone interview to assist in resolution of the issue.

In response to this rejection, the undersigned has referred to the current M.P.E.P. at §2106.IV.B-C along with the memorandum of Deputy Commissioner for Patent Examination Policy John Love dated May 15, 2008 entitled "Clarification of 'Processes' under 35 USC § 101". It is noted that this memorandum is dated after the date of the present Office Action and is believed to accurately reflect current USPTO policy.

The memorandum cited above states that a statutory process "must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing" in order to be statutory. The memo goes on to by example state that a claim is statutory if it "identify[ies] the apparatus that accomplishes the method steps". Applicant presumes this actually means "steps or acts".

In the present case, the claims have been amended to tie at least one step or act to an apparatus, and Applicant wishes to point out that the preamble already calls out a VOD system which is carrying out the steps or acts.

The Office disputes that the claims produce a beneficial or tangible result. Applicant disagrees, however, in order to clarify that benefit, the rejected independent the claims have also been amended to call out explicitly that the process produces content having identifiable duplicate selected packets suitable for selective encryption. In a selective encryption VOD system, having a set of content that is ready for selective encryption by virtue of duplication and appropriately marking for identification those packets that are to be selectively encrypted is clearly useful and tangible.

It is further noted that others of the claims call out additional ties to other statutory classes (e.g., trick mode tables and VOD servers, etc.) and produce further tangible results. Reconsideration and allowance are respectfully requested.

However, if the Examiner feels that these amendments and arguments are not adequate to overcome the rejection, the request for the courtesy of a telephone interview is respectfully reiterated.

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Regarding the Rejections under 35 U.S.C. §103 (a)

All claims rejected as obvious in this Office Action rely upon the Bonan reference of record. The Bonan patent issued on Nov. 6, 2007, was published on Dec. 2, 2004, was filed Jan. 29, 2004 and claims priority benefit from March 25, 2003.

The present application was filed on March 16, 2004 and claims priority benefit from Nov. 3, 2003. As best the undersigned can determine from this data, the Bonan patent can only potentially qualify as prior art under 35 U.S.C. §102 (e). However, the undersigned notes that the present application qualifies for exemption under 35 U.S.C. §103 (C) (1) as being owned or subject to an obligation to assign to the same entity at the time of the invention.

Both the Bonan patent and the present application are assigned to Sony Corporation and Sony Electronics by all inventors in assignments recorded at reel/frame 015644/0445 015526/0951 respectively. All inventors in both the Bonan patent and the present application were employed by and subject to an obligation to make such assignments of rights to the present assignee at the time of the inventions. Accordingly, the Bonan patent falls within the above-noted exception of 35 U.S.C. §103 (C) (1).

In view of this, and in view of the fact that all obviousness rejections depend upon the Bonan patent, the rejection is improper and should be withdrawn. Reconsideration and allowance are respectfully requested.

Concluding Remarks

The undersigned additionally notes that many distinctions exist between the cited art (including the Bonan reference) and the claims. However, in view of the failure of the Bonan reference to qualify as prior art, further discussion is believed to be unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

No amendment made herein was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references.

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Interview Request

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned respectfully requests the courtesy of an interview. The undersigned can be reached at the telephone number below.

Respectfully submitted,

/Jerry A. Miller 30779/

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